REMARKS

Claims 1-9 and 12-14 are pending in the application. The Examiner has rejected claims 1-9 and 12-14. Claims 1 and 12 has been amended. No new matter has been introduced. Reconsideration and allowance are respectfully solicited.

I. Claim Objection

Claims 12-14 have been objected to by the Examiner for informalities. The Examiner has pointed out that the claims 12-14 require the "first optical fiber" to be embedded in the conduit or to be a sensor. However, the "first optical fiber" of claim 1 from which claims 12-14 depend, requires the first optical fiber to branch away and to be an energy delivery device. Therefore, the first optical fiber distal end cannot be a sensor and/or embedded in the conduit at the same time. In addition, the Examiner has suggested amending claim 12 by replacing "first optical fiber" with "second optical fiber" to make the claim's language consistent with the embodiment of figure 4A. Applicant has amended the claim accordingly.

II. Claim rejection under 35 U.S.C 112

Claims 12-14 have been rejected under 35 U.S.C 112 1st Paragraph for not being enabled. Claim 12 has been amended to replace the "first optical fiber" with the second optical fiber, in order to be consistent with specification as discussed above. Therefore, claims 12-14 now meet the requirement of 35 U.S.C 112 1st paragraph.

III. Claim Rejections, 35 USC 103

The Examiner rejected claims 1-6, 8-9 and 12-14 over Johnson (3,866,599) in view of Polanyl (US 3,674,013). Reconsideration of this rejection in light of the following discussion is respectfully requested.

Claim 1 has been amended to more specifically recite an implantable surgical drain for draining fluid from a patient's body and sensing at least one physiological property of tissue by sensing energy that has been transmitted through and emitted from the tissue, comprising a first optical fiber having a first optical fiber distal end, wherein the distal end branches away from the conduit and is configured for insertion in the tissue inside the patient's body.

By the above clarifying amendment, the Applicant believes that any ambiguity noted by the Examiner on page 2 of the office action has been eliminated. Specifically, as the Examiner noted, the previous limitation of the claim having the first optical fiber distal end "branching away from the conduit's outer surface" could have rendered the first optical fiber branches away from either the outside or within the cannula. Therefore, amended claim 1 more clearly recites that the first optical fiber distal end branches away from the cannula.

As discussed in the previous response to the office action, neither Johnson nor Polanyl discloses the Applicant's surgical drain having an optical fiber, wherein the first optical fiber distal end branches away from the conduit and is configured for insertion into tissue. Polanyl's optical fiber distal ends do not branch away from the catheter. Claim 1 as amended requires an optical fiber distal end branching away from the

conduit. Polanyl's catheter has fiber optic distal ends that are angled *within* the catheter. As described in the specification, the optical fiber that branches from the conduit, as illustrated in figures 4A and 4B of the present application, is configured for a transmittance measurement. In claim 1 of the present application, the target tissue to be analyzed lies between the transmitting and the receiving optical fibers so that the transmitted light would pass through the target before being received (for example, see figures 4A and 4B, and accompanying text, of the present application). The distal end of the optical fiber branching away from the conduit allows insertion of the optical fiber into the tissue, so that the energy transmitted by the first optical fiber can pass through the tissue to the receiving optical fiber. Johnson does not disclose such a configuration; and Polanyl does not disclose the distal end of an optical fiber branching from the conduit for insertion into tissue.

Rather, Johnson and Polanyl disclose that the optical fibers embedded within an intravascular catheter *irradiate blood and collect the reflected* light from the blood to determine oxygenation saturation of the blood. In Johnson's reflection arrangement, both the transmitting and receiving fibers are on the same side facing the target (namely, the blood in the tip-recess of the catheter) so that the light emitted by one fiber is reflected back to be collected by another fiber. Therefore, a *prima facie* case has not been established with respect to claim 1 above since none of the cited prior art teaches the limitation of an "optical fiber distal end branches away from the conduit" of claim 1 of the present application.

The Applicant believes that claim 1 of the instant Application as amended is now allowable over Johnson in view of Polanyl.

Claims 2-6, 8, 9 and 12-14 variously depend from claim 1 and are thus themselves allowable for the same reasons.

The Examiner also rejected claim 7 under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Polanyl and further in view of Russo et al. (US 4,317,452). The Applicant respectfully requests reconsideration of the rejection in light of the discussion above.

IV. CONCLUSION

The Applicant respectfully submits that the above amendments and remarks place this application in a condition for allowance, which the Applicant respectfully solicits.

A petition for a three-month extension of time under 37 C.F.C. 1.136 is being filed contemporaneously herewith. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 501946 and please credit any excess fees to such deposit account and reference attorney docket no. 64693-97.

Respectfully submitted,
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